

Appeal No. 2009-1133

**BRIEF, ADDENDUM, AND SEPARATE APPENDIX
FOR APPELLEE THE UNITED STATES PATENT
AND TRADEMARK OFFICE**

United States Court of Appeals
for the Federal Circuit

JORGE TAYLOR,

Plaintiff-Appellant,

v.

UNITED STATES PATENT AND TRADEMARK OFFICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of New York in 08-CV-8634,
Senior Judge Harold Baer, Jr.

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May 20, 2009

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STATEMENT OF RELATED CASES

The United States Patent and Trademark Office (“USPTO”) is not aware of any other appeal involving the underlying decision in this case that was previously before this or any other appellate court. The USPTO is also unaware of any other cases pending in this or any other court that will directly affect, or be directly affected by, this Court’s decision in the pending appeal.

STATEMENT OF JURISDICTION

Because this case arises under the patent laws, the basis for the district court's jurisdiction was 28 U.S.C. § 1338(a). This Court has jurisdiction because it is reviewing a final decision of the district court, under 28 U.S.C. § 1295(a)(1).

STATEMENT OF THE ISSUE

When Mr. Jorge Taylor attempted to pay his 7.5 year maintenance fee, he was ten dollars short and five days late. In his attempts to deal with this problem, Mr. Taylor steadfastly refused to pay the petition fees required by the USPTO or to otherwise follow USPTO procedures for seeking reinstatement of his patent. Instead, Mr. Taylor sued the USPTO in district court in the Southern District of New York, where his claims were dismissed. The issue on appeal is whether the district court properly dismissed Mr. Taylor's claims, where the undisputed facts established that Mr. Taylor had not pursued proper procedures within the agency prior to bringing his claims in federal court.

STATEMENT OF THE CASE

This is an appeal from the district court's decision in *Taylor v. United States Patent and Trademark Office*, No. 08 CIV 8634 (S.D.N.Y.) (Decided

Oct. 9, 2008) (SA1-6).¹ That case purported to be a challenge to certain USPTO petition decisions related to Mr. Taylor's attempted payment of a maintenance fee in 2001. The district court found Mr. Taylor's complaint insufficient to state a claim for relief, dismissed the case, and certified, pursuant to 28 U.S.C. § 1915(a)(3), that "any appeal from this order would not be taken in good faith." SA6. Mr. Taylor appealed to this Court without paying the required appeal fee, and this Court dismissed the appeal for failure to pay that fee. Order dated January 29, 2009. After Mr. Taylor filed a petition to proceed *in forma pauperis*, and submitted a statement of non-discrimination as required by the Court, the Court reinstated the appeal. Order dated April 8, 2009.

STATEMENT OF THE FACTS

A. Before the USPTO

The facts are largely undisputed (or can be construed in Mr. Taylor's favor without changing the result of the case). Mr. Taylor's patent issued on January 12, 1993. SA14. Accordingly, the grace periods for the 3.5-, 7.5- and 11.5-year maintenance fee payments expired on January 12, 1997,

¹ The USPTO has prepared a separate appendix pursuant to Fed. Cir. R. 30(e) and (f). Citations to "SA __" refer to the USPTO's Separate Appendix. The USPTO also includes an Addendum hereto, which is cited as "Add. __." Citations to "Br. __" refer to Mr. Taylor's informal brief.

January 12, 2001, and January 12, 2005, respectively. 35 U.S.C. § 41(b).

Mr. Taylor successfully paid the first maintenance fee. As the grace period for paying the second maintenance fee was about to end, Mr. Taylor called the USPTO to find out how much money was due. According to Mr. Taylor, he was told that the amount due was \$1030 (SA32), although in fact the amount due was \$1040 (SA30).

Mr. Taylor put a check for \$1030, dated January 12, 2001, in the mail on January 12, 2001 (SA35; *see also* Add. 1), but did not include a certificate of mailing which would have entitled him to a filing date of January 12, 2001 (SA35; *see also* Add. 1). The USPTO received the \$1030 check on January 17, 2001 (SA35). The USPTO deposited the check.
SA22-23.

The facts before the district court did not include Mr. Taylor's transmittal form to the USPTO, attached in the Addendum hereto as Add. 1. While not technically part of the record before this Court, the form does help to explain how it came about that the USPTO kept Mr. Taylor's money rather than returning it to him in 2001. Mr. Taylor used the wrong form (PTO/SB 17 instead of PTO/SB 45), sent it to the wrong place within the USPTO (the Applications Branch rather than the Maintenance Fee branch, i.e. "Box M Fee," *see* MPEP §2510 (7th ed. July 1998)), and filled it out

incorrectly, indicating that \$945 should be applied to an “Extension for reply within fifth month” and that \$65 should be applied to a surcharge for “late filing fee or oath.” Although on close inspection the handwritten words “7 yr. fee” can be seen in the box for “Basic Filing Fee” next to a subtotal box in which Mr. Taylor had entered “\$1,030.00,” the USPTO employee who processed the form apparently did not recognize this filing as an attempt to pay a maintenance fee, and instead processed it according to the selections ostensibly made by Mr. Taylor.

In 2004, Mr. Taylor called the USPTO in preparation for paying the 11.5-year maintenance fee. During that conversation, Mr. Taylor learned that the USPTO considered his patent to have expired for failure to pay the 7.5-year maintenance fee. Mr. Taylor sent a fax to the USPTO on December 8, 2004, apparently attaching a copy of his cancelled check (SA22-25).

By letter dated February 27, 2005, Mr. Taylor asked the USPTO to reinstate his patent, which he characterized as having been “improperly expired on or about 1/12/01.” SA21. In the letter, Mr. Taylor stated that he was unable to pay the \$200 petition fee, but asked that the USPTO accept the letter as a petition under 37 C.F.R. § 1.377. *Id.*

The USPTO characterized Mr. Taylor's letter as a petition, but dismissed it on November 22, 2005,² without consideration on the merits, because Mr. Taylor had failed to include a petition fee, a "prerequisite to consideration of a petition under § 1.377." SA28-29. Nevertheless, recognizing that Mr. Taylor was a pro se applicant, the petition decision went on to advise him of his options. Based on Mr. Taylor's own evidence, it was clear that he had not timely paid the 7.5 year maintenance fee, because the \$1030 payment that he did pay was \$10 short of the required \$1040. SA30. On this basis, the petition decision informed Mr. Taylor that the "patent is properly considered expired." *Id.*

The petition decision pointed out that Mr. Taylor "is not precluded from seeking reinstatement of the patent under the stringent unavoidable standard" of 37 C.F.R. § 1.378(b) (*id.*), and explained that:

if the delayed payment of the maintenance fee is not ultimately accepted under 1.377 or 1.378, the maintenance fee and the surcharge set forth in § 1.20(i) (currently received \$1,030) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed.

² The USPTO had originally mailed the decision on September 12, 2005, but it was remailed on November 22 because the first address used was incorrect. SA34 n.1.

SA30-31. The decision also noted that the \$200 fee for a properly-filed § 1.377 petition would be refunded only if “the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.” SA31.

By letter dated January 18, 2006,³ Mr. Taylor continued to insist that he could not pay the \$200 petition fee, and alleged that the USPTO had (1) told him that the required maintenance fee was \$1030, and then (2) cashed his check and expired his patent without telling him. SA32.

In a June 21, 2006 decision, the USPTO again dismissed Mr. Taylor’s petition, again “without consideration on the merits,” and again for failure to pay the \$200 fee. SA34-35. The USPTO explained that even if it could waive the fee, it could not grant the petition, because Mr. Taylor had only submitted \$1030 of the required \$1040. SA35. Moreover, “closer review of the record reveal[ed] that the payment was received on January 17, 2001,” and that Mr. Taylor’s transmittal, dated January 12, 2001, did not include a certificate of mailing. SA35.⁴ Accordingly, in addition to being too little, the payment was too late. The petition decision again explained that Mr.

³ The USPTO apparently received this letter on June 15, 2006. SA34.

⁴ The certificate of mailing procedures of 37 C.F.R. § 1.8 may be utilized in paying maintenance fees. 37 C.F.R. § 1.366(b) (2001).

Taylor could seek reinstatement of his patent by filing a petition under 37 C.F.R. § 1.378(b) alleging unavoidable delay, and urged that “[a]ny petition under 1.378(b) should be promptly filed” (SA36).

B. The District Court Decision

Two years later, in the summer of 2008, Mr. Taylor filed a complaint against the USPTO in the United States District Court for the Southern District of New York, alleging that the USPTO had “misappropriated” his \$1030, and had failed to inform him that the patent had been expired. SA11. Mr. Taylor’s complaint demanded return of his \$1030, with “bank interest,” plus an additional billion dollars. *Id.* The complaint is stamped as having been received in the district court’s Pro Se Office on July 9, 2008. *Id.* The USPTO was never served with a copy of the complaint, and neither the USPTO nor any other government representative entered an appearance in the district court. SA8-10.

The district court granted Mr. Taylor’s request to *proceed in forma pauperis*, and dismissed the complaint for failure to state a claim upon which relief could be granted. Specifically, the district court found that the USPTO regulations did not provide for a waiver of the \$200 petition filing fee, and in view of Mr. Taylor’s failure to pay the fee, “he cannot allege that he has

satisfied the USPTO requirements such that he could state a claim arising out of the agency's denial of his petition." SA3.

Reviewing the case further, the district court observed that Mr. Taylor's failure to pay the full maintenance fee due, and his failure to pay anything prior to expiration of the grace period, constituted additional grounds for dismissing Mr. Taylor's claims. SA4.

The court went on to explain that Mr. Taylor's other option for challenging the expiration of his patent would have been to seek reinstatement of the patent under 37 C.F.R. § 1.378, under either the "unavoidable" standard or the "unintentional" standard. SA4-5. Without delving into the merits of whether Mr. Taylor could allege facts sufficient to establish unavoidable delay, the court noted that Mr. Taylor was ineligible for consideration under the unavoidable standard, because he had not paid the petition fee required by § 1.378. SA4. The Court noted that Mr. Taylor could not satisfy the "unintentional" standard both because his petition was not filed within 24 months after the expiration of the six-month grace period (as required by 37 C.F.R. § 1.378(c)) and because he had not paid the fee required by 37 C.F.R. § 1.378. SA5.

The Court also found that Mr. Taylor had failed to "allege facts that demonstrate that he is eligible for a refund [of his \$1030] at this time,"

because Mr. Taylor had not alleged he had received a final decision on a petition under § 1.377 or § 1.378 or that the time for filing such a petition had expired, as specified in the USPTO's petition decisions as conditions for a refund. Accordingly, the court dismissed Mr. Taylor's claim for the \$1030 refund. SA5. The court did not specifically address Mr. Taylor's claim for "bank interest" on the \$1030, or his claim for the additional billion dollars.

Finally, the court found that Mr. Taylor had not shown that the USPTO's actions were "arbitrary and capricious" (5 U.S.C. § 706(2)(A)) for purposes of making out a claim under the Administrative Procedure Act because (for example), the USPTO "has given plaintiff instructions on how to file a petition and plaintiff has not alleged that defendant handled his concerns any differently than the agency handles matters of other applicants." SA6.

The district court certified, pursuant to 28 U.S.C. § 1915(a)(3) that "any appeal from this order would not be taken in good faith" (citing *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962)).

SUMMARY OF THE ARGUMENT

As the district court found, Mr. Taylor failed to pay the petition fees that would have been required in order to obtain a final decision from the agency on the merits of his claims, either for acceptance of his maintenance

fee payment, or for reinstatement of his patent. Accordingly, because Mr. Taylor had not availed himself of proper agency procedures, the district court properly dismissed Mr. Taylor's claims.

ARGUMENT

A. Standard of Review

A district court's dismissal for failure to state a claim upon which relief can be granted is a question of law reviewed *de novo*. *Wyatt v. United States*, 2 F.3d 398, 400 (Fed. Cir. 1993).

B. Mr. Taylor Has Not Stated a Claim Upon Which Relief Can Be Granted

As both the USPTO and the district court found, because Mr. Taylor has refused to pay the required fees for the various types of petition that might be called for under these circumstances (*i.e.* a petition under 37 C.F.R. § 1.377 for review of the USPTO's decision not to accept and record maintenance fee payment, or a petition under 37 C.F.R. § 1.378(b) or (c) for reinstatement based on a showing of unavoidable or unintentional delay in payment of maintenance fee), Mr. Taylor has not received a final decision from the USPTO on the merits of his claim. Accordingly, he cannot state a claim for relief in the district court based on the USPTO's handling of his attempted maintenance fee payment, or based on the USPTO's dismissals of his petitions. *See Zhengxing v. U.S. Patent & Trademark Office*,

579 F. Supp. 2d 160 (D.D.C. 2008) (dismissing claims for lack of subject matter jurisdiction based on failure to exhaust administrative remedies before the USPTO); *see also FTC v. Standard Oil*, 449 U.S. 232, 243 (1980) (requiring a “definitive ruling” as basis for final agency action); MPEP § 1002.02 (“A dismissal of a petition, a denial of a petition without prejudice, and other interlocutory orders are not final agency decisions.”).

The USPTO notes that even if the failure to properly pay the 7.5-year maintenance fee could be overlooked, Mr. Taylor has now also failed to pay the 11.5 year maintenance fee, and has also missed the deadline for reinstatement based on “unintentional delay” of that payment. Thus, any petition for reinstatement of his patent at this point would have to establish unavoidable delay for his failure to pay that maintenance fee as well.

C. Mr. Taylor’s Brief Does Not Raise Any Meritorious Arguments.

Mr. Taylor’s brief is mainly directed to Mr. Taylor’s complaint that the USPTO kept his \$1030 while expiring his patent, and that the USPTO failed to notify him that it had not accepted the \$1030 as payment of the 7.5-year maintenance fee. *See* Br. at 1 & Sheet 1. These contentions do not address the basis for the district court’s dismissal; *i.e.*, that Mr. Taylor’s complaint failed to allege that he had “satisfied the USPTO requirements such that he could state a claim” for relief. (SA3). The district court was not

in a position to address Mr. Taylor's other complaints, because he failed to allege facts sufficient to support the predicate for any claim to relief.

D. The USPTO Has Provided Mr. Taylor the Remedy to Which He Is Entitled.

As the district court found, the USPTO has instructed Mr. Taylor on how to file a petition before the agency in order to pursue reinstatement of his patent. SA6. The USPTO will consider any petition filed by Mr. Taylor, provided he complies with the rules governing petitions that apply to all patent holders and patent applicants. In view of the USPTO's belief that Mr. Taylor is unlikely to pursue a petition at this stage, the USPTO has unilaterally decided to refund him his \$1030, as opposed to continuing to hold it against the possibility that Mr. Taylor might file a petition to reinstate his patent. In separate correspondence, the USPTO has advised Mr. Taylor that he remains eligible to file a petition to have his patent reinstated for unavoidable delay, should he choose to do so.

CONCLUSION

Because Mr. Taylor failed to state a claim upon which relief could be granted before the district court, the district court properly dismissed his complaint. While the USPTO takes seriously Mr. Taylor's allegations that he received improper advice from the USPTO regarding the proper amount of his 7.5 year maintenance fee, and that the USPTO should have refunded

him his \$1030 when it was first received, Mr. Taylor is not entitled to his claimed relief. The district court's decision should be affirmed.

Respectfully submitted,



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May 20, 2009

Addendum Pursuant to Rule 28(j):

January 12, 2001 Fee Transmittal in Application No. 07/710,752

RE - - NOTE: IF THIS IS NOT THE CORRECT FORM, PLEASE MAIL THE CORRECT FORM TO THE RETURN ADDRESS ON THE CHECK

PTO/SB/17 (11-00)
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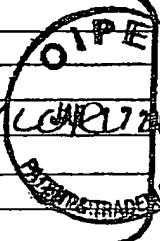
FEE TRANSMITTAL for FY 2001

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$1,030)

Complete if Known

Application Number	07/710,752
Filing Date	05-31-91
First Named Inventor	JORGE TAYLOR
Examiner Name	LORIN, F.
Group Art Unit	1301
Attorney Docket No.	TAYJ10A



METHOD OF PAYMENT

1. The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number

Deposit Account Name

Charge Any Additional Fee Required
Under 37 CFR 1.16 and 1.17

Applicant claims small entity status.
See 37 CFR 1.27

2. Payment Enclosed:

Check Credit card Money Order Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
101	710	201 355 Utility filing fee	<input type="text"/>
106	320	206 160 Design filing fee	<input type="text"/>
107	490	207 245 Plant filing fee	<input type="text"/>
108	710	208 355 Reissue filing fee	<input type="text"/>
114	150	214 75 Provisional filing fee	<input type="text"/>

7yr fee **SUBTOTAL (1)** (\$1,030.00)

2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from Below	Fee Paid
<input type="text"/>	-20** = <input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	-3** = <input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>			

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description
103	18 203 9	Claims in excess of 20
102	80 202 40	Independent claims in excess of 3
104	270 204 135	Multiple dependent claim, if not paid
109	80 209 40	** Reissue independent claims over original patent
110	18 210 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 9)

*or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
105	130	205 65 Surcharge - late filing fee or oath	<i>12/20/00</i>
127	50	227 25 Surcharge - late provisional filing fee or cover sheet	
139	130	139 130 Non-English specification	
147	2,520	147 2,520 For filing a request for ex parte reexamination	
112	920*	112 920* Requesting publication of SIR prior to Examiner action	
113	1,840*	113 1,840* Requesting publication of SIR after Examiner action	
115	110	215 55 Extension for reply within first month	
116	390	216 195 Extension for reply within second month	
117	890	217 445 Extension for reply within third month	
118	1,390	218 695 Extension for reply within fourth month	
128	1,890	228 945 Extension for reply within fifth month	
119	310	219 155 Notice of Appeal	
120	310	220 155 Filing a brief in support of an appeal	
121	270	221 135 Request for oral hearing	
138	1,510	138 1,510 Petition to institute a public use proceeding	
140	110	240 55 Petition to revive - unavoidable	
141	1,240	241 620 Petition to revive - unintentional	
142	1,240	242 620 Utility issue fee (or reissue)	
143	440	243 220 Design issue fee	
144	600	244 300 Plant issue fee	
122	130	122 130 Petitions to the Commissioner	
123	50	123 50 Processing fee under 37 CFR 1.17(q)	
128	180	126 180 Submission of Information Disclosure Stmt	
581	40	581 40 Recording each patent assignment per property (times number of properties)	
146	710	246 355 Filing a submission after final rejection (37 CFR § 1.128(a))	
149	710	249 355 For each additional invention to be examined (37 CFR § 1.129(b))	
179	710	279 355 Request for Continued Examination (RCE)	
169	800	169 900 Request for expedited examination of a design application	
Other fee (specify) _____			

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$1,010)

Complete if applicable

Name (Print/Type)	JORGE TAYLOR	Registration No. (Attorney/Agent)	TAYJ10A	Telephone	(202)459-3727
Signature	<i>JORGE TAYLOR</i>	Date	1/12/01		

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SEPARATE APPENDIX UNDER FED. CIR. R. 30(e), (f)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOC # 3.08 CIV 8634

JORGE TAYLOR

Plaintiff

ORDER OF DISMISSAL

-against-

UNITED STATES PATENT AND TRADEMARK OFFICE,

Defendant.

X

Plaintiff, Jorge Taylor, appearing *pro se*, brings this complaint alleging that the United States Patent and Trademark Office ("USPTO") "misappropriated \$1,030.00 and expired Mr. Taylor's patent on the ground that Mr. Taylor failed to pay his patent fee." Compl. 1. Plaintiff seeks ~~return~~ of the \$1030 that he paid the patent office with bank interest, as well as damages in the amount of \$1 million. The court grants plaintiff's request to proceed *in forma pauperis*, but dismisses the complaint for the following reasons.

U.S. DISTRICT COURT
-9-SPH:R:24

BACKGROUND

Once a patent owner has been granted a patent, he must pay maintenance fees in order to prevent it from expiring. A patent owner can pay maintenance fees without a surcharge: "(1) 3 years through 3 years and 6 months after grant for the first maintenance fee, (2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and (3) 11 years through 11 years and 6 months after grant for the third maintenance fee." 37 C.F.R. § 1.362(d). If a patent owner misses the above deadlines, he may still pay maintenance fees, but with a late surcharge: "(1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee, (2) 7 years and 6 months and through the day of the 8th anniversary of the grant for the second

maintenance fee, and (3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee." 37 C.F.R. § 1.362(e). In other words, if the patent owner is less than six months late in submitting his maintenance fees, he may still do so, so long as he pays a surcharge.

On January 12, 1993, plaintiff was issued a patent for a chemical sealant device for repairing flat tires, Patent No. 5,178,701. See Complaint at Exh. 1c. Under the USPTO regulations described above, plaintiff had a window between January 12, 2000 and July 12, 2000 to pay the seven-and-a-half-year \$975 maintenance fee without a surcharge, and he had a window between July 13, 2000 and July 12, 2001 to pay the \$975 maintenance fee with a \$65 surcharge. Plaintiff alleges that he submitted \$1,030 of the \$1,040 maintenance fee on January 17, 2001, allegedly five days after the deadline for payment of the maintenance fee with a surcharge. See id. at Exh. 1c at 1, 2. Plaintiff alleges that he discovered that his patent had expired when he tried to pay the eleven-year maintenance fee, and was informed by the USPTO that his patent had expired because he had not paid the complete fee three years earlier. See id. at 1.

Plaintiff alleges that the USPTO should have informed him right away that the fees he submitted in January 2001 were deficient by \$10. See id. at Exh. 1b. He alleges that but for the USPTO's delay, he would not be required to pay the \$200 petition fee required for an assessment of his reinstatement claim to the USPTO. See id. at Exh. 1b. He also alleges that he cannot afford the \$200 fee because he is disabled and indigent. See id. at 1.

DISCUSSION

I. Challenge to Expiration of Patent

Under regulations governing patent fees, a patent owner has two options to challenge the expiration of his patent: (a) he may challenge the USPTO's refusal to accept his maintenance fee, see 37 C.F.R. § 1.377; or (b) he may seek reinstatement of his patent, see 37 C.F.R. § 1.378. Both options require the patent owner to pay a petition fee of \$200. See 37 C.F.R. § 1.17(g). Plaintiff alleges that because he is disabled and indigent, the USPTO should waive the petition fee. See Compl. at 1. However, neither § 1.377 nor § 1.378 contain provisions for waiving petition fees. See 37 C.F.R. §§ 1.17(g), 1.377, 1.378. Because the USPTO regulations do not provide a waiver for indigent applicants, the \$200 petition fee required for plaintiff to bring a reinstatement claim cannot be waived. Further, because plaintiff has failed to pay the \$200 filing fee, he cannot allege that he has satisfied the USPTO requirements such that he could state a claim arising out of the agency's denial of his petition. Plaintiff therefore fails to state a claim for relief, and his claims must be dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii).

A. Challenge To USPTO Refusal To Accept Maintenance Fee

Plaintiff's first option to challenge the expiration of his patent is to challenge the USPTO's refusal to accept his maintenance fee. "Any patentee," such as plaintiff, "who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Director to accept and record the maintenance fee." 37 C.F.R. § 1.377(a). Such petitions "must be filed within two months of the action complained of, or within such other time as may be set in the action complained of." 37 C.F.R. § 1.377(b). The petition must also be accompanied by a fee of \$200. Id. Here, plaintiff did

submit \$1030 of the \$1040 maintenance fee in 2001, but he did not submit the \$200 petition fee. Furthermore, plaintiff also filed his 2001 maintenance fee five days after the end of the time that payment with surcharge was permissible. Compl. at Exh. 1e at 2. Therefore, (1) because plaintiff paid only a portion of the maintenance fee, (2) he paid it five days late, and (3) he failed to pay a petition fee, his claims must be dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Seeking Reinstatement Of Patent

Plaintiff's second option to challenge the expiration of his patent is to seek reinstatement of the patent under 37 C.F.R. § 1.378. See also 35 U.S.C. § 41(c)(1). Any petition for reconsideration under this section must also be accompanied by a \$200 fee. See 37 C.F.R. § 1.378(e). There are two standards under which the USPTO reviews petitions seeking reinstatement of patents under § 1.378: the "stringent unavoidable standard" and the "unintentional standard." Id. The "stringent unavoidable standard" requires a patentee to show that "the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of the expiration of the patent." 37 C.F.R. § 1.378(b)(3). In deciding whether to reinstate a patent under the "unavoidable delay standard," the USPTO considers "(1) the delay that originally resulted in the expiration, (2) the delay in filing the first petition to reinstate, and (3) the delay in filing a grantable petition to reinstate." Burandt v. Dudas, 496 F. Supp. 2d 643, 646 (E.D. Va. 2007). "The determination of whether a failure to file a maintenance fee was unavoidable is made on a case-by-case basis, taking all of the facts and circumstances into account." MMTC v. Rogan, 369 F. Supp. 2d 675, 677 (E.D. Va. 2004) (citation omitted). Here, once again, plaintiff cannot be eligible for consideration under this standard because he has not paid the \$200 petition fee. See 37 C.F.R. § 1.378(e).

Plaintiff also cannot satisfy the "unintentional standard" delineated in 37 C.F.R. § 1.378(c).

"Any petition to accept an unintentionally delayed payment of a maintenance fee . . . must be filed within twenty-four months after the six-month grace period. . . ." 37 C.F.R. § 1.378(c); see also Millman v. U.S. Patent and Trademark Office, 257 F. App'x. 307, 309 (Fed. Cir. 2007). At the time plaintiff wrote to the USPTO in February 2005, more than 24 months had already elapsed from July 12, 2001, the latest he could pay his seven-year maintenance fee within the six-month grace period. See 37 C.F.R. § 1.378(c). In addition to being late under this standard, plaintiff also did not pay the required \$200 fee. See 37 C.F.R. § 1.378(e). Because plaintiff does not allege facts that he could satisfy either the "unavoidable delay standard" or the "unintentional standard," he cannot seek reinstatement of his patent, and his claim must be dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii).

II. Refunds

To the extent that plaintiff seeks a refund of his \$1030, plaintiff does not allege facts that demonstrate that he is eligible for a refund at this time. The \$1030 "will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition" has passed. 37 C.F.R. § 1.378(e). Plaintiff does not allege that a decision on a petition for consideration has been made or that the time for filing such a petition has expired. Therefore, his claim seeking a \$1030 refund from the USPTO must also be dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii).

III. Arbitrary and Capricious Standard

In addition to his inability to satisfy regulations governing USPTO actions, plaintiff has not shown that the USPTO's actions were arbitrary or capricious. An agency action may be set aside when it is "found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

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PRO SE

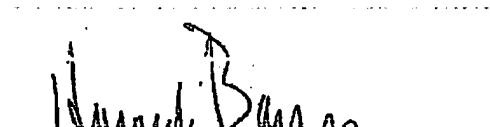
212 805 0697 P.07

with law," Korsinsky v. Dudas, 227 F. App'x. 891, 894 (Fed. Cir. 2007) (citing 5 U.S.C. § 706(2); Star Fruits S.N.C. v. United States, 393 F.3d 1277, 1281 (Fed. Cir. 2005)). Moreover, "[t]he scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency." Ray v. Lehman, 55 F.3d 606, 608. "[A]lthough the PTO may notify applicants about irregularities, it has no obligation to do so." Urologix, Inc. v. Prostalund AB, 227 F. Supp. 2d 1033, 1035 (E.D. Wis. 2002) (citation omitted). Here, plaintiff has not presented facts that demonstrate that defendant's refusal to reinstate his expired patent was arbitrary, capricious, or an abuse of discretion. For example, the USPTO has given plaintiff instructions on how to file a petition and plaintiff has not alleged that defendant handled his concerns any differently than the agency handles matters of other applicants. Plaintiff's claims therefore must be dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii).

CONCLUSION

Accordingly, the complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a)(1), is dismissed for failure to state a claim. See 28 U.S.C. § 1915(e)(2)(B)(ii). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.


HAROLD BAER
United States District Judge

Dated: OCT 09 2009
New York, New York

JAN-06-2009 21:56

PRO SE

212 805 0697 P.08

DOC # 4
U8 CV 8634

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

JORGE TAYLOR,

Plaintiff,

CIVIL

-against-

JUDGMENT

UNITED STATE PATENT AND TRADEMARK OFFICE,

Defendants.

X

Pursuant to the order issued OCT 9 2009 by the Honorable Harold Baer,

United States District Judge, dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Court's order would not be taken in good faith.


HAROLD BAER
United States District Judge

Dated: OCT 9 2009
New York, New York

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 10/14/08

OCT 9 2009
S.D. OF N.Y.
U.S. DISTRICT COURT
FILED
10/14/08

SA007

APPEAL, CLOSED, PRO-SE

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:08-cv-08634-HB

Taylor v. United States and Trademark Office
 Assigned to: Judge Harold Baer
 Case in other court: US Court of Appeals for the Federal
 Circuit, 09-01133
 Cause: 28:1331 Fed. Question

Date Filed: 10/09/2008
 Date Terminated: 10/09/2008
 Jury Demand: Plaintiff
 Nature of Suit: 830 Patent
 Jurisdiction: U.S. Government
 Defendant

Plaintiff

Jorge Taylor

represented by **Jorge Taylor**
 646 St. Nicholas Ave. # 102
 New York, NY 10030
 PRO SE

V.

Defendant

United States and Trademark Office

Date Filed	#	Docket Text
10/09/2008	1	DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Jorge Taylor.(rdz) (Entered: 10/14/2008)
10/09/2008	2	COMPLAINT against United States and Trademark Office. Document filed by Jorge Taylor.(rdz) (Entered: 10/14/2008)
10/09/2008		Magistrate Judge Kevin N. Fox is so designated. (rdz) (Entered: 10/14/2008)
10/09/2008	3	ORDER OF DISMISSAL, The court grants plaintiff's request to proceed in forma pauperis, but dismisses the complaint for reason's set forth. Plaintiff has not presented facts that demonstrate that defendant's refusal to reinstate has expired patent was arbitrary, capricious, or an abuse of discretion. For example, the USPTO has given plaintiff instructions on how to file a petition and plaintiff has not alleged that defendant handled his concerns any differently than the agency handles matters of other applicants. Plaintiff's claims therefore must be dismissed. Accordingly, the complaint filed in forma pauperis under 28 U.S.C. 1915(a)(1), is dismissed for failure to state a claim. The Court certifies pursuant to 28 U.S.C. 1915 (a)(3) that any appeal from this order would not be taken in good faith. (Signed by Judge Harold Baer on 10/9/08) (rdz) (Entered: 10/14/2008)

SA008

10/09/2008	4	JUDGMENT. Ordered, Adjudged and Decreed: That the complaint be and is hereby dismissed. 28 U.S.C. 1915(e)(2). We certify pursuant to 28 U.S.C. 1915 (a)(3) that any appeal from the Court's order will not be taken in good faith. (Signed by Judge Harold Baer on 10/9/08) (rdz) (Entered: 10/14/2008)
12/08/2008	5	NOTICE OF APPEAL TO THE FEDERAL CIRCUIT from 4 Judgment - Sua Sponte (Complaint), 3 Order Dismissing Complaint (I.F.P.). Document filed by Jorge Taylor. (tp) (Entered: 12/17/2008)
12/08/2008		Appeal Remark as to 5 Notice of Appeal to the Federal Circuit filed by Jorge Taylor. \$455.00 APPEAL FEE DUE. IFP REVOKED 10/9/08. (tp) (Entered: 12/17/2008)
12/17/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals for the Federal Circuit re: 5 Notice of Appeal to the Federal Circuit. (tp) (Entered: 12/17/2008)
12/17/2008		Transmission of Notice of Appeal to the District Judge re: 5 Notice of Appeal to the Federal Circuit. (tp) (Entered: 12/17/2008)
01/08/2009		USCA Case Number 2009-1133 from the US Court of Appeals for the Federal Circuit assigned to 5 Notice of Appeal to the Federal Circuit filed by Jorge Taylor. (nd) (Entered: 01/08/2009)
02/04/2009	6	MANDATE OF USCA for the Federal Circuit as to 5 Notice of Appeal to the Federal Circuit filed by Jorge Taylor USCA Case Number 2009-1133. The appellant having failed to pay the docketing fee required by Federal Circuit Rule 52(a)(1) within the time permitted by the rules, it is ORDERED that the notice of appeal be, and the same hereby is, DISMISSED, for failure to prosecute in accordance with the rules. Jan Horbaly, Clerk USCA. Issued as a mandate: 1/29/09. (tp) Modified on 4/15/2009 (nd). (Entered: 02/04/2009)
04/15/2009	7	TRUE COPY ORDER of USCA for the Federal Circuit as to 5 Notice of Appeal to the Federal Circuit filed by Jorge Taylor USCA Case Number 2009-1133. Appellant Jorge Taylor, having filed the statement concerning discrimination, pursuant to the court's order of March 17, 2009, it is ORDERED that the order of dismissal and the mandate be, and the same hereby are, VACATED and RECALLED, and the notice of appeal is REINSTATED. Appellee's brief is due within 21 days from the date of filing of this order. Jan Horbaly, Clerk USCA for the Federal Circuit. (nd) Modified on 4/15/2009 (nd). (Entered: 04/15/2009)
04/15/2009		Appeal Remark as to 5 Notice of Appeal to the Federal Circuit filed by Jorge Taylor USCA Case Number 2009-1133: 6 USCA mandate returned back to US Court of Appeal for the Federal Circuit as per 7 USCA Order. (nd) (Entered: 04/15/2009)

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SA009

Description:	Docket Report	Search Criteria:	1:08-cv-08634-HB
Billable Pages:	2	Cost:	0.16

SA010

JUDGE BAER

DOC # 2

United States District Court
Southern District Of New York

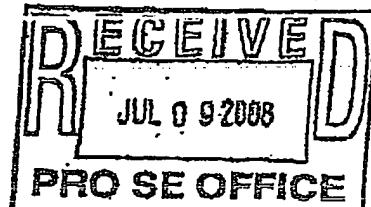
Jorge Taylor

Plaintiff,

Complaint

-against-

"Jury Trial Demanded"

United States Patent And Trademark Office
Defendant.New York County)
SS:
State of New York)

1. I, Jorge Taylor duly sworn depose and say, under penalty of perjury, that I reside at 646 St. Nicholas Avenue Apartment 102, New York, NY. 10030, and I move against The United States Patent and Trademark Office, P.O. Box 1450 Alexandria, VA. 22313-1450, and that I am the sole inventor of the patented device named "The Flat Answer", patent #5,178,701 (1/12/1993).

2. The patent office misappropriated \$1,030.00 and expired Mr. Taylor's patent on the ground that Mr. Taylor failed to pay his patent fee. The \$1,030.00 was to pay for said fee. They claim now that Mr. Taylor was short \$10, but they never informed him as to the \$10, and they CASHED the \$1,030.00 check, as if the fee had been paid. However, 3 years later Mr. Taylor try to pay the next fee and was told by the Patent Office that his patent had been expired for lack of the fee payment 3 years back.

3. JURISDICTION: Federal court has jurisdiction over federal question of whether government has right not to misappropriate funds without due process of law, and whether federal court has power to order the redress due to misappropriation of funds to state citizens under color of law.

4. Because of the misappropriation of Mr. Taylor's \$1,030.00, which must be returned with bank interest, Mr. Taylor now demands redress in the amount of \$1,000 000 000.00. Mr. Taylor feels that if he had been informed as to the \$10.00 discrepancy (then) that he would have been able to send the \$10 to protect his intellectual property which would have been worth well over \$1,000 000 000.00 in the U.S. and world market. The patent office was given an opportunity to resolve the matter at bar, see exhibit #1, but did nothing, other than to insult Mr. Taylor's intelligence by asking for a \$200.00 fine for Mr. Taylor to be heard in this matter, or for them to view their error. However, it was a calculated move to deprive Mr. Taylor of his constitutional right to be heard in a matter involving property, liberty, or life. They knew that Mr. Taylor was a pauper living in a N.Y C. shelter, and that he had just begun to receive federal help in the form of S.S.I. not only because Mr. Taylor is a pauper, but he also suffers from a mental and physical disability that prevents him from being able to work.

5. Wherefore, Mr. Taylor prays that this honorable court grants him this and any other relief this court may deem appropriate.

I declare under penalty of perjury that the foregoing is true and correct:

Respectfully Submitted,

Signed this day of JUN 09 2008

State of New York
County of New York

return to before this this
day of June 20

Judge Taylor
LINDA MARENTES 646 St Nicholas Av.
Notary Public, State of New York NY NY 10030.
Reg. No. 01MA45061793
Qualified in Kings County
Certificate Filed in New York County
Commission Expires June 17, 2017

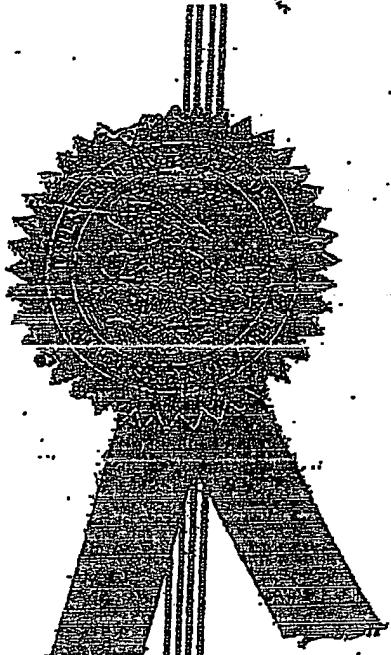
SA011

EXHIBIT ONE

Table of Contents

- 1a. United States Patent and one of the companies selling millions of tires using my invention.
- 1b. Letter in the form of petition to rule 37,
With attached exhibits 1,2,3,4,5.
- 1c. Answer from Commissioner for Patents.
- 1d. Letter in the form of petition to answer the
Commissioner's response of Nov 22, 2005.
- 1e. Commissioner's response to letter from petitioner
Dated January 18, 2006.fg

The
United
States
of
America



The Commissioner of Patents
and Trademarks

Has received an application for a patent for a new and useful invention. The title and description of the invention are enclosed. The requirements of law have been complied with, and it has been determined that a patent on the invention shall be granted under the law.

Therefore, this

United States Patent

Grants to the person or persons having title to this patent the right to exclude others from making, using or selling the invention throughout the United States of America for the term of seventeen years from the date of this patent, subject to the payment of maintenance fees as provided by law.

Acting Commissioner of Patents and Trademarks

United States Patent No.
Taylor

[11] Patent Number: 5,178,701
[45] Date of Patent: Jan. 12, 1993

[54] CHEMICAL SEALANT DEVICE FOR
REPAIRING FLAT TIRES

[76] Inventor: Jorge Taylor, 104 Alcolade Dr. East,
Shirley, N.Y. 11967

[21] Appl. No.: 710,752

[12] Filed: May 31, 1991

[51] Int. Cl. 5 B29C 73/22; B60C 17/00

[52] U.S. Cl. 152/500, 152/418; 152/516

[53] Field of Search 152/502, 503, 504, 505,
152/506, 507, 509, 337.1, 338.1, 341.1, 342.1,
418, 516, 518, 519, 520

[55] References Cited

U.S. PATENT DOCUMENTS

3,511,794 5/1970 Bepristis et al. 152/418
3,641,843 1/1976 Edwards et al. 152/509 X
4,363,953 4/1981 Nicelli 152/520 X

US005178701A

FOREIGN PATENT DOCUMENTS
2651520 5/1978 Fed. Rep. of Germany.
0015204 2/1979 Japan.

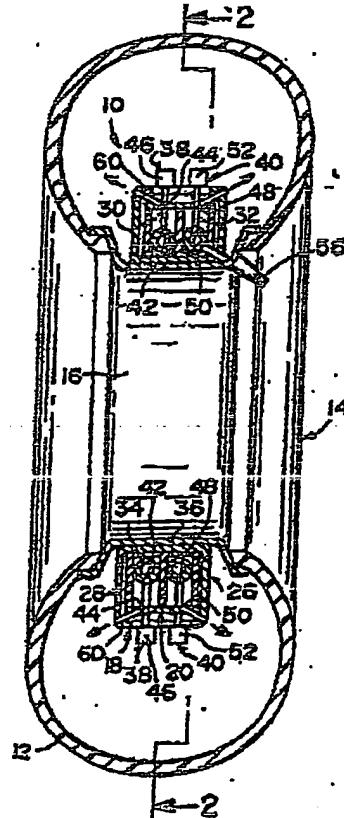
Primary Examiner—Michael W. Ball

Assistant Examiner—Francis J. Lorin
Attorney, Agent, or Firm—Richard L. Miller

[57] ABSTRACT

A chemical sealant device is provided for repairing a flat tire of a wheel, which consists of a rim for supporting and fitting a tire thereabout. A first mechanism is on the interior of the rim for carrying a portion of the load of the wheel after the tire is punctured and becomes partially flat. A second mechanism is within the first carrying mechanism for releasing at predetermined intervals of rotation of the wheel, the chemical sealant and compressed air into the tire so that eventually the tire will be repaired and the pressure will be at least partially restored, whereby road damage to the tire will be prevented.

6 Claims, 2 Drawing Sheets



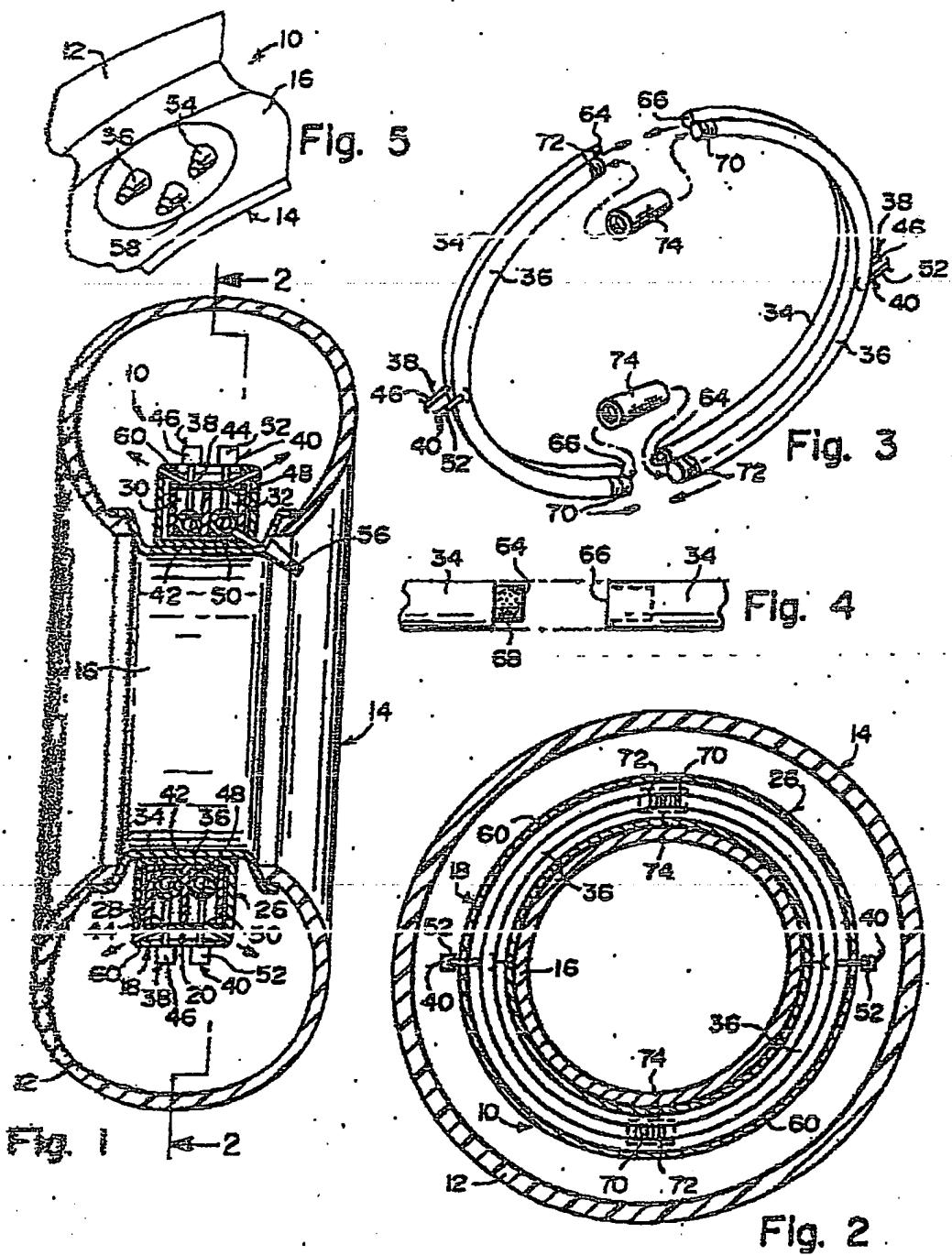
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Jan. 12, 1993

Sheet 1 of 2

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U.S. Patent

Jan. 12, 1993

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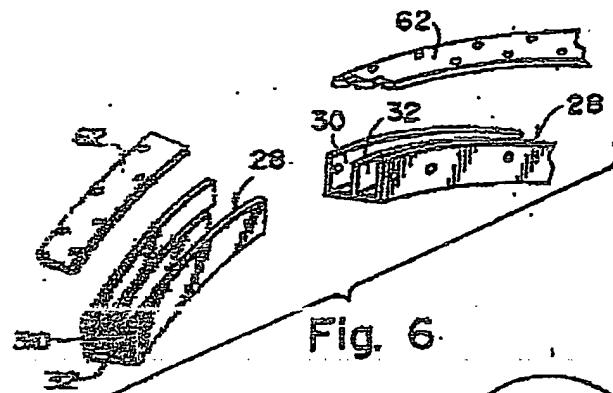


Fig. 6

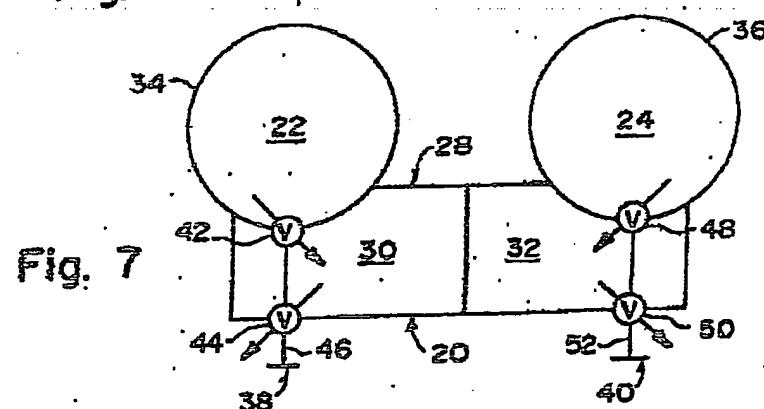


Fig. 7

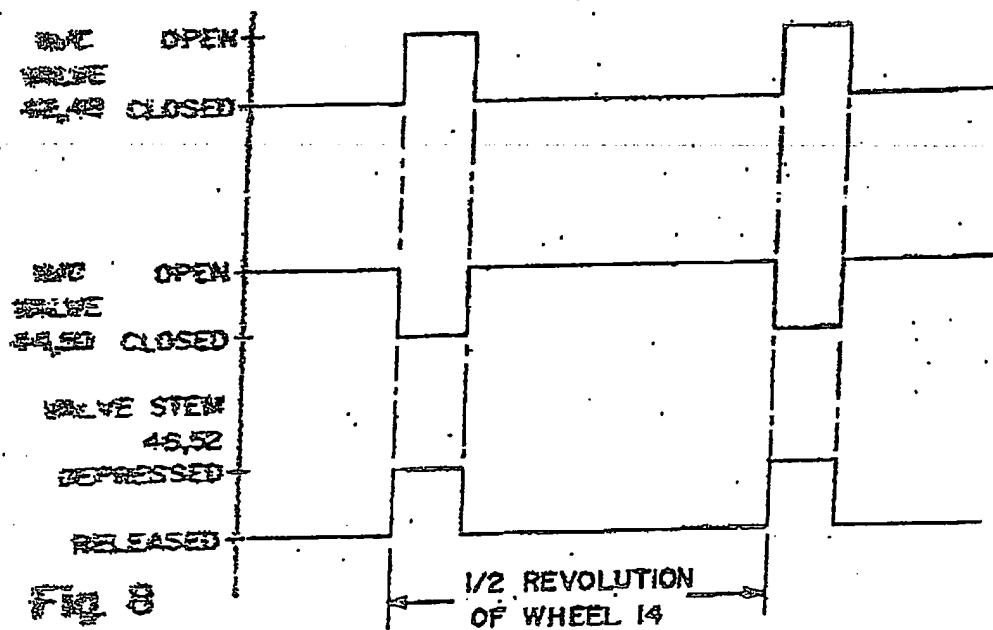


Fig. 8

5,178,701

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**CHEMICAL SEALANT DEVICE FOR REPAIRING
FLAT TIRES**

BACKGROUND OF THE INVENTION

The instant invention relates generally to tire repair and more specifically it relates to a chemical sealant device for repairing a flat tire automatically while the tire remains in use on the vehicle.

Numerous tire repair kits have been provided in the prior art that are adapted to remove the tire from the rim and plug up punctures in the tire. For example, U.S. Pat. Nos. 3,963,417 to Platck; 4,317,692 to Niconchuk and 4,710,249 to Roberts all are illustrative of such prior art. While these units may be suitable for the particular purpose to which they address, they would not be as suitable for the purpose of the present invention as hereinafter described.

SUMMARY OF THE INVENTION

A primary object of the present invention is to provide a chemical sealant device for repairing a flat tire that will overcome the shortcomings of the prior art devices.

Another object is to provide a chemical sealant device for repairing a flat tire that includes a valve system built into the tire wheel rim to release at predetermined intervals of rotation the chemical sealant and compressed air when the tire is punctured, thereby preventing a road hazard accident.

An additional object is to provide a chemical sealant device for repairing a flat tire that does away with the tedious time consuming task of fixing the flat before being able to safely drive.

A further object is to provide a chemical sealant device for repairing a flat tire that is simple and easy to use.

A still further object is to provide a chemical sealant device for repairing a flat tire that is economical in cost to manufacture.

Further objects of the invention will appear as the description proceeds.

To the accomplishment of the above and related objects, this invention may be embodied in the form illustrated in the accompanying drawings, attention being called to the fact, however, that the drawings are illustrative only and that changes may be made in the specific construction illustrated and described within the scope of the appended claims.

**BRIEF DESCRIPTION OF THE DRAWING
FIGURES**

The figures in the drawings are briefly described as follows:

FIG. 1 is a diagrammatic cross sectional view of a wheel with parts broken away with the instant invention installed therein;

FIG. 2 is another diagrammatic cross sectional view taken on line 2-2 of FIG. 1;

FIG. 3 is a diagrammatic perspective view of the chemical and air vessels of the instant invention;

FIG. 4 is a diagrammatic elevational view showing the securing mechanism for the tire chemical sealant vessel;

FIG. 5 is a perspective view with parts broken away of the fill inlets;

FIG. 6 is a diagrammatic perspective view with parts broken away of the inner torus member;

FIG. 7 is a diagrammatic representation of the valve system; and

FIG. 8 is a timing diagram indicating the sequence of events in which material is released by the valve system.

**DETAILED DESCRIPTION OF THE
PREFERRED EMBODIMENTS**

Turning now descriptively to the drawings, in which similar reference characters denote similar elements throughout the several views, the Figures illustrate a chemical sealant device 10 for repairing a flat tire 12 of a wheel 14, which consists of a rim 16 for supporting and fitting the tire 12 thereabout. A mechanism 18 is on the interior of the rim 16 for carrying a portion of the load of the wheel 14 after the tire 12 is punctured and becomes partially flat. Another mechanism 20 is within the carrying mechanism 18 for releasing at predetermined intervals of rotation of the wheel 14, the chemical sealant 22 and compressed air 24 into the tire 12 so that eventually the tire 12 will be repaired and tire pressure will be at least partially restored, whereby road damage to the tire will be prevented.

The carrying mechanism 18 includes an outer hollow torus member 26 affixed onto the interior surface of the rim 16. The releasing mechanism 20 includes an inner hollow torus member 28 having dual side by side annular chambers 30 and 32, whereby the inner hollow torus member 28 is disposed within the outer hollow torus member 26. A first annular vessel 34 is placed into the first annular chamber 30 of the inner hollow torus member 28. The first annular vessel 34 holds the tire chemical sealant 22 therein. A second annular vessel 36 is placed into the second annular chamber 32 of the inner hollow torus member 28. The second annular vessel 36 holds the compressed air 24 therein. A first valve system 38 is connected to the first annular vessel 34, so that when the first valve system 38 is activated by the rotation of the wheel 14, it will release some of the tire chemical sealant 22 from the first annular chamber 30 of the inner hollow torus member 28 into the tire 12 to seal the puncture. A second valve system 40 is connected to the second annular vessel 36, so that when the second valve system 40 is activated by the rotation of the wheel 14, it will release some of the compressed air 24 into the second annular chamber 32 of the inner hollow torus member 28 into the tire 12 to inflate the tire 12.

The first valve system 38 includes a normally closed valve 42 between the first annular vessel 34 and the first annular chamber 30 of the inner hollow torus member 28. A normally opened valve 44 is between the first annular chamber 30 of the inner hollow torus member 28 and the interior of the tire 12. A valve stem 46 is connected to the normally closed valve 42 and the normally opened valve 44 and extends outwardly from the outer hollow torus member 26. When the wheel 14 rotates the valve stem 46 will be depressed and released at the predetermined intervals. The second valve system 40 includes a normally closed valve 48 between the

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U S DISTRICT COURT

BRIDGESTONE Run-Flat System

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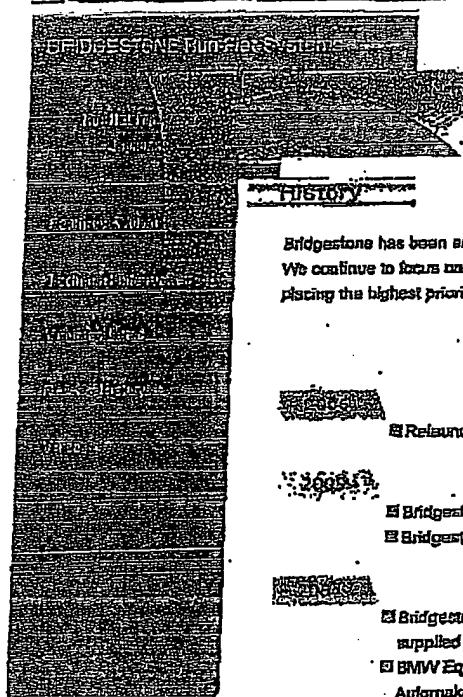
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Bridgestone has been addressing the development of Run-Flat tires for more than twenty years. We continue to focus on the development to provide more advanced technology to auto makers and consumers as placing the highest priority on the safety and comfort of customers.

RECENT NEWS

■ Relaunch of Bridgestone's Run-Flat System Website

■ Bridgestone Shipments of Run-Flat Tires Top Three Million
■ Bridgestone Commercializes Support Ring-type Run-Flat System

■ Bridgestone Shipments of Run-Flat Tires Top One Million Company has supplied more Run-Flats than any other tire manufacturer
■ BMW Equips New 6 Series with Bridgestone Run-Flat Tires in Japan Automaker also mounts Bridgestone Run-Flats on 6 Series introduced in

North America this spring

■ Bridgestone Supplies Run-Flat Tires for Ferrari 612 Scaglietti Automaker

offers Bridgestone Potenza RE050 RFT tires as optional equipment on Ferrari 612 Scaglietti

■ Bridgestone Begins Delivering Run-Flat Tires to BMW for New 5 Series Model Family

■ BMW Z4 to Feature Bridgestone Run-Flat Tires as Factory Equipment Automaker will equip open-top two-seater roadster exclusively with Potenza RE050 RFT tires

■ Bridgestone and Continental Welcome Yokohama into Cooperation in Run-Flat Systems for Passenger Cars and SUVs

■ Bridgestone Corporation and Continental AG, Germany, Cooperate in Run-Flat Tire Systems by signing a technical agreement

■ Bridgestone and Continental Announced at Geneva Auto Show to

http://www.runflat-system.com/news_en/index.html

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U S DISTRICT COURT

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BRIDGESTONE Run-Flat System

Page 2 of 2

Explore Broadened Collaboration in Extended Mobility Systems

- Bridgestone achieves success in developing tire pressure monitoring systems for Run-Flat tires.
<These features include safety wedge wheels are integrated in the system>
- Bridgestone achieves success in developing the roll flat support systems that allow for driving after the tire pressure drops.
<Support ring-type Run-Flat tires compatible with conventional wheels>
- Run-Flat tires go on sale as one of the Firestone brands in North America.
<P195/60R15, P205/60R15 and P225/60R15>
- The Run-Flat version of a EXPEDIA S-01 high-performance tire goes on sale in US.
<Sidewall-reinforcement Run-Flat tires and safety wedge wheels are equipped with Corvette>

- Bridgestone produces a sidewall-reinforcement Run-Flat tire (for CIVIC 175/70R13) as part of a social activity for disabled persons.
<Run-Flat tires received permission for the limited use in the International Year of Disabled Persons
Up to 60 kilometers per hour for a distance of up to 100 kilometers>
- The sidewall-reinforcement Run-Flat tires are adopted to a sports car with low aspect ratio tires.
<Adopted to Porsche 958 as factory equipment POTENZA RE71 (P)235/45VR17 / (R) 265/40VR17>

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BRIDGESTONE Run-Flat System

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BRIDGESTONE Run-Flat Systems

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7/9/2008

SA020

16.

Commissioner for Patent
P.O. Box 1450 Mail Spot
Petition Alexandria Virginia 212 313-1450

2/27/05

Dear Patent Commissioner:

Please accept this informed letter as the required document to enter your honorable office in the form of a petition to rule 377 to reinstate pat# 5178701 Serial # 07/710/752 which was improperly expired on or about 1/12/01, for no-payment of fee (see attached exhibits 1/2/3/4/5).

Your petitioner hereby Jorge Taylor, is not an attorney but a pauper disabled living on a fixed income (SSI) who cannot pay \$200 to petition your office.

Herein, I submit proof of fee payment and documents to show that your office was conscious of the problem in the past. Your petitioner found out about the patent problem when he contacted your office in relation to paying the 2004 fee. He was told the patent had been expired for lack of payment.

Hoping your honorable office will mend this error, I close.

Respectfully Submitted,

Jorge Taylor

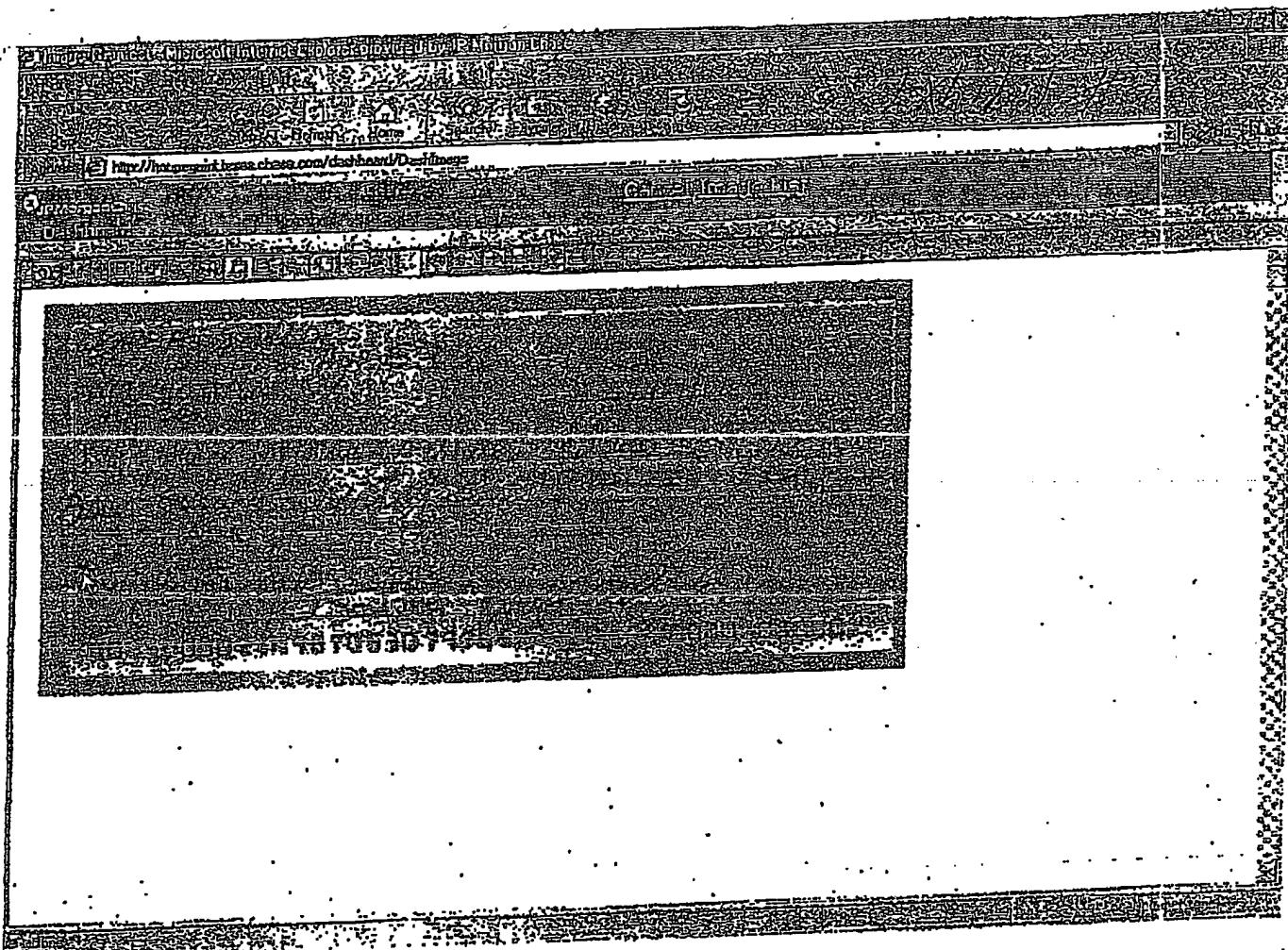
SA021

Best Available Copy

03/23/08 MON 13:05 FAX

U S DISTRICT COURT

012



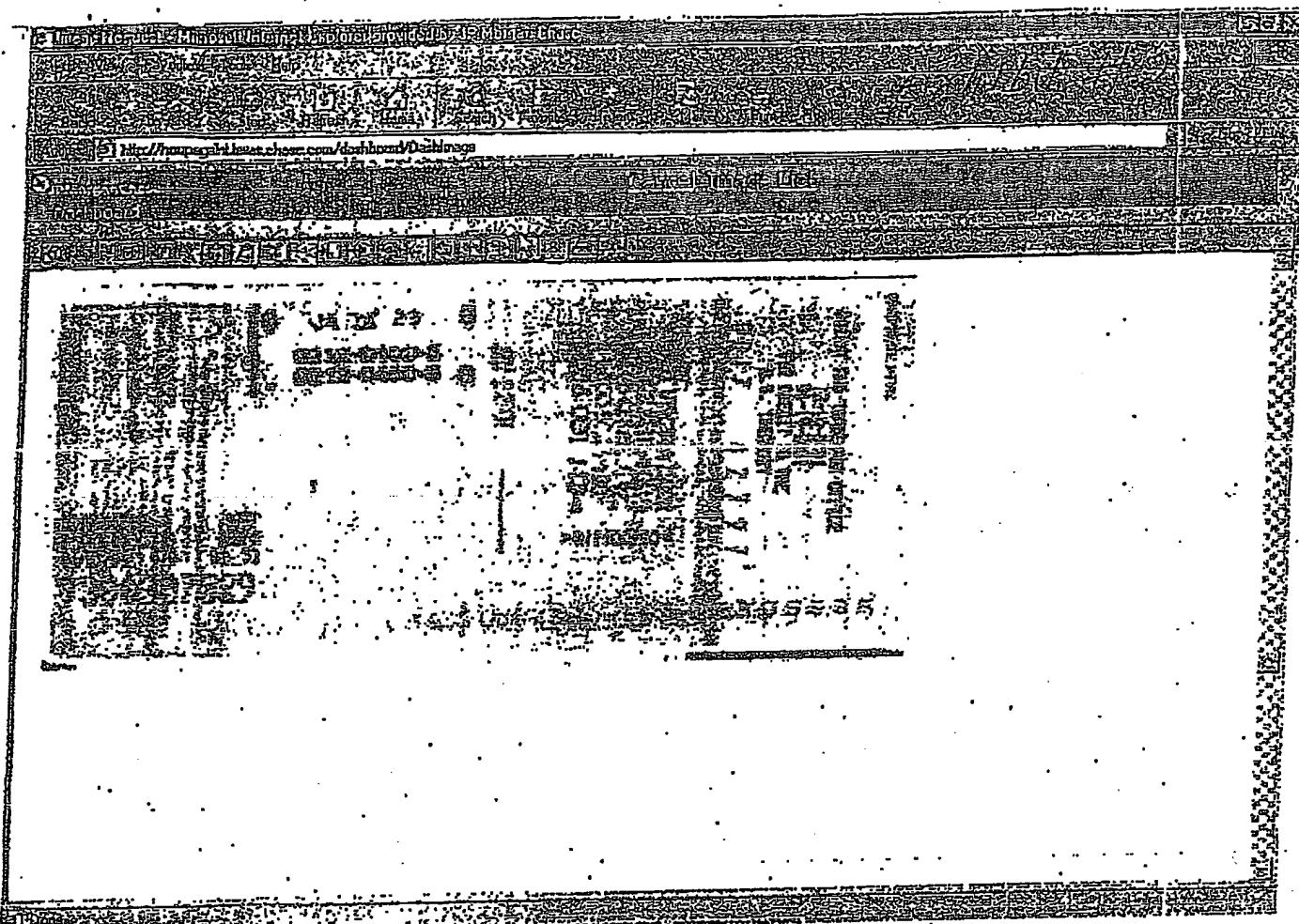
SA022

Best Available Copy

03/23/09 MON 13:08 FAX

U S DISTRICT COURT

013



SA023

617# 3

FAX CC LETT

TO: United States Patent Office
FROM: Jorge Taylor Patent #5178,701 Serial # 07/710/752
DATE: 12/08/2004
RE: Non payment of fee and patent dismissal
FAX #: 703 308-6778

OF PAGES, INCLUDING COVER SHEET: 2

MESSAGE: Included is proof of payment for patent fee of 1/12/01.
Any questions please call Mr. Taylor at
1646 262-9726. All mail can be sent to 274 West 40th
street, NY, NY, 10018.

CONFIDENTIALITY:

This message is intended for the use of the individual or entity to whom or which it is addressed and may contain information that is privileged, confidential, exempt from disclosure and protected under Federal Register Part II, Title 42, Code of Federal Regulations and the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Parts 160 and 164. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this message in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service.

Transmit report

P.1

Exhibit 4
12/08/2004 16:24
250E5550
TC:49417

ROUTE STATION	START	TIME	Pages	RESULT	REMARKS
917033086778	12-08 16:22	00:01 59	003/003	OK	

REMARKS TIR:Timer, POL:Poll, TRN:Turn around, 2IN:2in1 Tx, ORG:Original size set, DPG:Book Tx
 FME:Frame erase Tx, MIX:Mixed original, CALL:Manual-Conn, KRD:KRDs, FRD:FORWARD
 FIL:Flip Side 2, SP:Special Original
 FCODE:Code, MBX:Confidential, BUL:Bulletin, RLY:Relay, RTX:Re-Tx, PC:PG-FAX
 S-OK:Stop communication, Busy:Busy, Cont:Continues, No ans:No answer
 M-full:Memory full, PW-OFF:Power switch off, REL:Re-tell TE

FAX COVER LETTER

TO: Laura Taylor, P.O. Box #5178, 701, Serial #07719722
 FROM:
 DATE: 12/08/2004
 RE: New payment of the bond went through
 FAX #: 703 308-6778

OF PAGES, INCLUDING COVER SHEET: 2
 MESSAGE: Included is info for payment for return fee of 1/12/01.
Any questions please call Mr. Taylor or me.
1645 2nd Street, All mail can be sent to 274 West 40th
Street, NY, NY 10018.

CONFIDENTIALITY:

This message is intended for the use of the individual or entity to whom it relates or to which it is addressed and may contain information that is privileged, confidential, exempt from disclosure under Federal law, or exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. The reader of this message is hereby advised that the recipient and the intended recipient are responsible for the security of this information. You are hereby advised that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this message in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service.

SA025

SOCIAL SECURITY ADMINISTRATION

Date: March
Claim Number./040A
0-7040DI

JORGE M TAYLOR
274 WEST 40TH ST
ROOM 28
NEW YORK NY 10018-1503

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter.

Information About Supplemental Security Income Payments

Beginning January 2005, the current Supplemental Security Income payment is.....\$ 666.00

This payment amount may change from month to month if income or living situation changes.

Supplemental Security Income Payments are paid the month they are due. (For example, Supplemental Security Income Payments for March are paid in March.)

Date of Birth Information

The date of birth shown on our records is May 23, 1947.

03/23/09 MON 13:08 FAX

U S DISTRICT COURT

018

If You Have Any Questions

If you have any questions, you may call us at 1-800-772-1213, or call your local Social Security office at 212-399-5320. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
5TH FLOOR
237 W 48TH STREET
NEW YORK, NY 10036

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

OFFICE MANAGER

SA027

03/23/09 MON 13:08 FAX

U S DISTRICT COURT

2019

1c.



UNITED STATES PATENT AND TRADEMARK OFFICE

FOR PATENTS
MARK OFFICE
P. BOX 1450
20131-1450
www.uspto.gov

JORGE TAYLOR
646 Saint Nicholas Avenue
Apt 102
New York, NY 10030

COPY MAILED

NOV 22 2005

In re Patent No. 5,178,701 :
Jorge Taylor :
Issue Date: January 12, 1993 : ON
Application No. 07/710,752 : PETITION
Filed: May 31, 1991 :
Title: CHEMICAL SEALANT DEVICE:
FOR REPAIRING FLAT TIRES :

OFFICE OF PETITIONS

This is in response to the communication received April 1, 2005. Patentee requests reinstatement of the above-identified patent on the basis that the maintenance fee was timely paid.

The patent issued January 12, 1993. The window for paying the 7-1/2 year maintenance fee without surcharge extended from January 12, 2000 through July 12, 2000. The window for paying the 7-1/2 year maintenance fee with surcharge opened on July 13, 2000, and extended to July 12, 2001.

Patentee submits evidence in the form of a cancelled check to show that payment in the amount of \$1,030 was submitted to the Office on or about January 12, 2001. Patentee further states that he first became aware that the Office considered the maintenance fee not paid, when he attempted to pay the 2004 fee. However, patentee does not enclose the petition fee.

RELEVANT REGULATIONS

§ 1.366 Submission of maintenance fees, provides that:

(c) In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance

Application No. 5,178,701

Page 2

fees are being paid must include the patent number, and the application number of the United States application for the patent on which the maintenance fee is being paid. If the payment includes identification of only the patent number (i.e., does not identify the application number of the United States application for the patent on which the maintenance fee is being paid), the Office may apply the payment to the patent identified by patent number in the payment or may return the payment.

§ 1.377. Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent, further provides that:

(a) Any patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and record the maintenance fee.

(b) Any petition under this section must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of, and must be accompanied by the fee set forth in § 1.17(g). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

(c) Any petition filed under this section must comply with the requirements of § 1.181(b) and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

ANALYSIS

The petition is not accompanied by the required fee under § 1.17(g) or a written authorization to charge the fee to a Deposit Account. Payment of the petition fee of \$200 is a prerequisite to consideration of a petition under § 1.377.

Accordingly, the decision on petition under § 1.377 is DISMISSED without consideration on the merits.

Application No. 5,178,701

Page 3

However, under the circumstances, it is appropriate to advise the applicant as follows: Using petitioner's evidence, it has been confirmed that a payment of \$1,030 was received in the office in January of 2001. However, the required fees due at that time totalled \$1,040. Specifically, the 7-1/4 surcharge was \$375 and the late surcharge within 6 months was \$65. Thus, accepting that \$1,030 was submitted, it cannot be concluded that the required maintenance fee and surcharge to accept late maintenance fee were timely submitted. Accordingly, the patent is properly considered expired.

Patentee's response to be considered timely should be submitted within TWO (2) MONTHS from the mail date of this communication. Extensions of time under § 1.136(a) are not permitted. This period for reply is governed by § 1.181(f).

Alternatively, patentee is not precluded from seeking reinstatement of the patent under the stringent unavoidable standard. 37 CFR 1.378(b) provides that:

Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

- (1) The required maintenance fee set forth in § 1.20 (e) through (g);
- (2) The surcharge set forth in § 1.20(i)(1); and
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Any petition under 1.378(b) should be promptly filed.

Patentee is further advised that if the delayed payment of the maintenance fee is not ultimately accepted under 1.377 or 1.378, the maintenance fee and the surcharge set forth in § 1.20(i) (currently received \$1,030) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for

Application No. 5,178,701

Page 4

reconsideration, if none is filed. However, any petition fee (\$200) under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

For patentee's convenience, a change of address form to correct the correspondence address for the patent is enclosed.

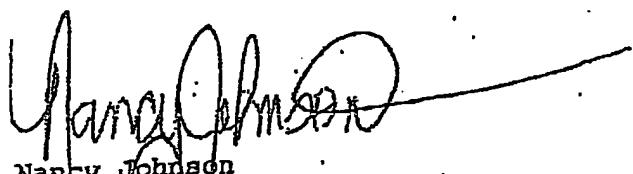
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By fax: (571) 273-8300
ATTN: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Change of Correspondence Address - Patent

January 18, 2006

Commissioner of Patents
P.O. Box 1450 Mail Spot
Petition Alexandria Virginia
22313-1450

Patent #: 5,178,701
Application #: 07/710, 752

Dear Commissioner,

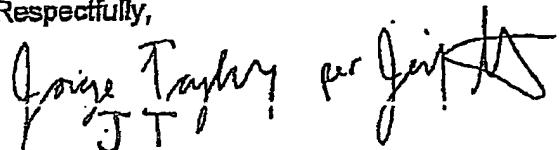
Since I, Jorge Taylor do not have \$200.00 to be heard, and to show that your office is in error or not acting in good faith, by this letter in the form of a petition I am informing you of the facts your office may want to keep obscure:

- 1) You never billed me, but told me over the phone that my fee was \$1030.00. I paid you that much.
- 2) You cashed my check, pocketed my \$1030.00 and expired my patent for lack of payment. You then never informed me otherwise. I also have proof that I paid this amount of \$1030.00. You kept me in the dark over a \$10.00 discrepancy for over 3 years so that you could keep the \$1030.00 and expire my patent, without my knowledge, for lack of payment. If I did not pay the fee why would you cash my check? How convenient, like a thief in the night, never informed me of your malfeasance. If there were any discrepancies as to the fee owed and the fee paid, you should have made me aware so that the transaction could have been corrected.
- 3) I have the right to be heard through "Due Process of Law" when life, liberty, or properties are at jeopardy. These are rights protected by the U.S. Constitution. The patent is my intellectual property. Are you saying that because I do not have \$200 I cannot be heard? Or that my property can be taken without due process of law?
- 4) My \$1030.00 was the same in 2001. Today in 2006, my \$1030.00 is \$1030.00 plus 5 years of bank interest. This is in relations to you stating the return of the \$1030 if I cannot pay the \$200.00 to be heard in your office.

5) I will not wave my money nor my patent without a fight. If I have to enter a constitutional court over the infringement of my rights, I will. Please make a final decision as to this case so that I will know where to go next.

Thank you for your time and I look forward to hearing from you soon.

Respectfully,



Jorge Taylor
646 St. Nicholas Ave Apt # 102
New York, NY 10030

Patent #: 5, 178, 701
Application #: 07/710, 762

P.S: On 1-19-06 I had surgery done on right hand. Not easy to sign, I used initials.



UNITED STATES PATENT AND TRADEMARK OFFICE

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mark Office
D. Box 1450
122313-1450
www.uspto.gov

JORGE TAYLOR
646 Saint Nicholas Avenue
Apt 102
New York, NY 10030

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JUN 21 2006

OFFICE OF PETITIONS

In re Patent No. 5,178,701.

Jorge Taylor

Issue Date: January 12, 1993

ON

Application No. 07/710,752

PETITION

Filed: May 31, 1991

Title: CHEMICAL SEALANT DEVICE

FOR REPAIRING FLAT TIRES

This is in response to the communication received June 15, 2006. Patentee disputes the requirement that a (refundable) fee be paid for consideration of a petition under 37 CFR 1.377.

The patent issued January 12, 1993. The window for paying the 7-1/2 year maintenance fee without surcharge extended from January 12, 2000 through July 12, 2000. The window for paying the 7-1/2 year maintenance fee with surcharge opened on July 13, 2000, and extended to January 12, 2001.

Patentee asserts that the fee in the amount of \$1,030 was timely submitted. However, patentee does not enclose the petition fee. By decision mailed November 22, 2005¹, the petition was dismissed without consideration on the merits. Patentee was advised that a fee of \$200, refundable if it was found that the failure to accept and record the maintenance fee was the fault of the Office, was required.

On instant response, patentee argues that the petition fee should be waived.

¹ The decision was originally mailed September 12, 2005; however, it was re-mailed on November 22, 2005 as the first address used was incorrect.

Application No. 5,178,701

Page 2

The petition fee is subject to refund. However, the payment of the fee is required for consideration of the petition. Patentee's arguments have been considered but not found persuasive that the fee should be waived.

Given the continued failure to submit the petition fee, the petition under § 1.377 is again DISMISSED without consideration on the merits.

Even if the fee were waived, patentee is advised that the maintenance fee would not be accepted as timely filed. As previously stated, the required fees due January 2001 totalled \$1,040. However, patentee only submitted \$1,030. More importantly, a closer review of the record reveals that the payment was received on January 17, 2001. A copy of the fee transmittal as originally filed is present in the application. The transmittal was dated January 12, 2001, but did not include a certificate of mailing. Thus, in addition to being deficient by \$10, the response was filed 5 days after the end of the window for payment with surcharge. Thus, accepting that \$1,030 was submitted on January 17, 2001, it cannot be concluded that the required maintenance fee and surcharge to accept late maintenance fee were timely submitted. Accordingly, the patent is properly considered expired.

Patentee's response to be considered timely should be submitted within TWO (2) MONTHS from the mail date of this communication. Extensions of time under § 1.136(a) are not permitted. This period for reply is governed by § 1.181(f).

Alternatively, patentee is not precluded from seeking reinstatement of the patent under the stringent unavoidable standard. 37 CFR 1.378(b) provides that:

Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

- (1) The required maintenance fee set forth in § 1.20 (e) through (g);
- (2) The surcharge set forth in § 1.20(i)(1); and
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed

Application No. 5,178,701

Page 3

promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Any petition under 1.378(b) should be promptly filed.

Patentee is further advised that if the delayed payment of the maintenance fee is not ultimately accepted under 1.377 or 1.378, the maintenance fee and the surcharge set forth in § 1.20(i) (currently received \$1,030) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. However, any petition fee (\$200) under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

Patentee should advise the Office of the intention to or not to file a petition.

For patentee's convenience, a change of address form to correct the correspondence address for the patent is enclosed.

Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

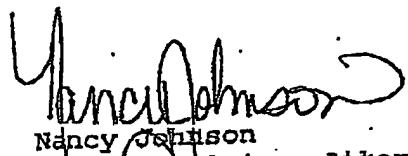
By fax: (571) 273-8300
ATTN: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Application No. 5,178,701

Page 4

Telephone inquiries specific to this decision may be directed to
the undersigned at (571) 272-3219.

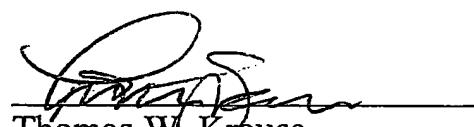


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2009, I caused two copies of the
foregoing BRIEF, ADDENDUM, AND SEPARATE APPENDIX FOR
APPELLEE UNITED STATES PATENT AND TRADEMARK OFFICE to
be sent by Federal Express, to:

Mr. Jorge Taylor
646 St. Nicholas Ave. No. 102
New York, NY 10030



Thomas W. Krause
Associate Solicitor

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